IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1069 OF 2004.

Ashok Relumal Mangwani ..Petitioner

versus

Vitthal Shankar Akkole
& Others ..Respondents

Mr.Kulkarni for the Appellant

None for the respondent

Coram : S.R.Sathe, J.
Dated : 25th January, 2007

P.C.

1. Heard learned Advocate for the petitioner. The Respondents advocate absent when called out.

2. The application for delay condonation has been rejected by the trial court as per the order dated 3.7.2003. It is true that the applicant had in fact at one point of time stated that he could not file application in time as he was ill. At the same time it was advanced that he had gone out of station. As a result of that the trial court dismissed the application holding that no satisfactory explanation is given for not filing restoration application in time and delay was not explained properly. It is true that normally when

applicant had alleged that he could not file the application due to his sickness, it was necessary for him to file medical certificate to that effect. However, that has not been filed. But at the same time there was nothing on record to indicate that the petitioner was in fact not sick and was in a position to attend the court. Considering the nature of the allegation and with a view that there should be decision of the matter on merits, in the interest of justice the order passed on 3.7.2003 is set aside. Delay caused in filing restoration application is condoned. However, the petitioner is directed to pay costs of Rs.10,000/- (Rupees Ten Thousand Only) to the respondent within eight days from today. Payment of cost is a condition precedent for further prosecution of the restoration application.

(S.R.Sathe, J.)